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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,641	12/30/2003	Lyle Berman		6896

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EXAMINER	
LAYNO, BENJAMIN	
ART UNIT	**PAPER NUMBER**
3711	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/748,641	BERMAN, LYLE	
	Examiner	Art Unit	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's arguments filed 1/18/07 have been fully considered but they are not persuasive.

2. The Applicant has argued that the Examiner is misreading parargraph [0064] in the Chilton reference. Chilton describes declaring a winner by identifying whoever has the most number of credits – regardless of what the number of credits may be. The payout is "winner take all"; the recipient of the payout is whoever has the highest number of wins, which would surely vary each time entry for a tournament is opened up. The Applicant gives an example of one player gaining entry into a tournament with three winning hands. The very next day, the very same player would be denied entry to the tournament despite winning three hands, if on that day another player won four or more. This is not a payout determined by the statistical probability of winning the total amount, a payout which the laws of probability ensure to be the same each time entry to the tournament is opened up.

3. The Examiner takes the position that the limitations in paragraphs (2) and (3) in claim 1 are broad because it recites "selecting a quantity of play based on criteria from the group comprising a set amount of time, a number of hands or combinations thereof", "determining at least one payout based on the statistical probability of winning a total amount from the group consisting of an amount of credits, amount of winning hands or combinations thereof during the selected quantity of play". There is no limitation in paragraphs (2) and (3) suggesting that **any** player in the game wins a payout **each and every time** the player in the game wins **a predetermined** amount of credits, wins **a**

predetermined amount of winning hands during a quantity of play based on criteria from the group comprising a set amount of time, a number of hands or combinations thereof, **and** the **same** player in the game also wins the **same** payout **each and every time** the player in the game wins the **same predetermined** amount of credits, wins the **same predetermined** amount of winning hands during **any other** quantity of play based on criteria from the group comprising the **same** set amount of time, the **same** number of hands or combinations thereof.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-13 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Chilton et al..

The patent application publication to Chilton et al. discloses a method of wagering on a casino slot machine card game 10a. To play Chilton's game the slot machine accepts a wager from a player, see paragraph [0037]. Chilton recites "that the qualifying outcome or condition could be associated for example with one or more of a plurality of selectable selections in a player selection type game or one or more offers in

a player offer acceptance type game" paragraph [0056]. Thus, the player selects a quantity of play based on criteria of a number of hands (poker hands). A payout is determined based on the statistical probability of winning a total amount of credits in a predetermined amount of time, see paragraph [0064]. The player accumulating the most credits in the predetermined amount of time wins a payout (grand prize), see paragraph [0064]. **The Examiner takes the position that it is inherent in Chilton's game to permit play to continue even if a hand is lost because the object of Chilton's game is not to receive consecutive winning hands, but to accumulate the most credits over a predetermined amount of time. Thus, receiving losing hands during the predetermined amount of time is inevitable.**

In regard to claims 3, 5, 7, Chilton's slot machine card game is played on a network, paragraph [0044].

Smart cards may be used on Chilton's slot machine card game in order to track a player's accumulated total credits, paragraphs [0037], [0038].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chilton et al. as applied to claim 1 above, and further in view of Moore 463'.

The patent to Moore 463' teaches that it is known in the slot machine art to play a dice game on a slot machine, Fig. 3. In view of such teaching, it would have been obvious to use dice symbols on Chilton's slot machine reels. This modification would have attracted dice game players to Chilton's slot machine.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chilton et al. as applied to claim 1 above, and further in view of Celona.

The patent to Celona teaches that in the slot machine art that if one player win a bonus or jackpot payout, that bonus or jackpot payout may be divided among other player. In view of such teaching, it would have been obvious to modify Chilton's slot machine such that if one player wins a bonus payout, that payout would have been divided among the other players. This modification would have made Chilton's game more exciting to play.

6. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chilton et al. as applied to claim 1 above, and further in view of Ornstein 885'.

The patent to Ornstein 885' teaches that it is known to play a card game on a slot machine, Fig. 2 and place a wager on the number of consecutive wins a player receives while playing the slot machine, col. 4, line 33 to col. 21. In view of such teaching, it would have been obvious provide Chilton's slot machine a payout for consecutive wins. During game play on Chilton's slot machine, if a player placed a wager for four consecutive winning hands, and if a player received less than four consecutive winning hands (e.g. one win, two consecutive wins, or three consecutive wins), the player would

have received a payout based on the statistical probability of winning less than the total number (four) of consecutive winning hands.

7. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chilton et al. as applied to claim 1 above, and further in view of Acres et al.

The patent to Acres teaches that it is known in the networked slot machine art to provide a player tracking card 120 having a code for tracking a player's frequency of playing slot machines. In view of such teaching, it would have been obvious to provide a player tracking cards having codes to Chilton's slot machine. This modification would have information to casino on how often a player is playing the slot machines for business purposes.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl